

To: Title III Directors

From: Darlene Slaby, Director  
Office of English Language Learning and Migrant Education  
(formerly Division of Language Minority and Migrant Programs)

Gaylon Nettles, Director  
Office of Student Services

Date: March 11, 2008

RE: Retention of Limited English Proficient (LEP) students

In regards to retention of limited English proficient (LEP) students, the Guidelines to Satisfy Legal Requirements document, posted at <http://ideanet.doe.state.in.us/lmmp/pdf/lepguidelines.pdf>, specifically states that the retention of LEP students “shall NOT be based solely upon English Language Proficiency.” All LEP students should have an Individual Learning Plan that describes the adaptations and modifications to be made in the classroom and on exams in order to help ensure that each student is receiving “equity of treatment.” *Lau v. Nichols*, 414 U.S. 563, 94 S. Ct. 786 (1974). LEP students must also be placed age appropriately and provided with appropriate instruction (511 IAC 6.1-5-8).

The Office of English Language Learning and Migrant Education, in consultation with State Attendance Officer, the Division of Exceptional Learners, and the Division of Early Learning and Literacy, advises against the creation of a school corporation policy whereby any elementary grade-level student who fails the English/Language Arts portion of ISTEP+ would be retained. Retention policies, especially for LEP students, should not be based on one specific piece of data alone or any sole criterion. The Indiana Department of Education has consistently cautioned school corporations regarding the inappropriateness of such a procedure. Retaining students based solely on limited English proficiency could have civil rights implications.

Guidance on appropriate retention policies for LEP students is available at:

<http://www.doe.state.in.us/lmmp/documents.html> in the *Retention Guidelines for Limited English Proficient (LEP) Students* document. Further questions on retention of LEP students should be directed to the Office of English Language Learning and Migrant Education at (317) 232-0555 or (800) 382-9962.